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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 ALBERT DOMINGO GONZALEZ,

8 Petitioner,

9 v.

10 DONALD HOLBROOK,

11 Respondent.

No. C12-5106 BHS/KLS

REPORT AND RECOMMENDATION

Noted for: May 18, 2012

12 This case has been referred to United States Magistrate Judge Karen L. Strombom
13 pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner failed to pay the filing fee
14 of \$5.00 or file a completed application to proceed *in forma pauperis*. ECF No. 1. Petitioner has
15 also failed to respond to the Court's Order to Show Cause. ECF No. 4.

16 The undersigned recommends that Petitioner's motion to proceed *in forma pauperis* and
17 petition for writ of habeas corpus be denied without prejudice.

18 **BACKGROUND**

19 On February 8, 2012, Petitioner filed a motion for leave to proceed *in forma pauperis*
20 (IFP) and a proposed Petition for Writ of Habeas Corpus. ECF No. 1. On February 10, 2012,
21 the Clerk advised Petitioner that his IFP application was incomplete as he had not submitted the
22 proper IFP form and had failed to complete and submit a Written Consent for Payment of Costs.
23 ECF No. 3. The Clerk sent the appropriate forms to Petitioner and advised that he should
24 complete and return the forms to the Court on or before March 12, 2012. *Id.* Petitioner failed to
25 do so.
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1 On March 29, 2012, the Court ordered Petitioner to show cause why his petition should
2 not be dismissed for failure to prosecute. ECF No. 4. The Court ordered Petitioner to pay the
3 filing fee of \$5.00 or submit a completed IFP application with a signed Written Consent on or
4 before April 20, 2012. *Id.* Petitioner has not paid the filing fee, has not submitted a completed
5 IFP application or otherwise responded to the Court's Order.

6 **DISCUSSION**

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8 The court may permit indigent litigants to proceed *in forma pauperis* upon completion of
9 a proper affidavit of indigency. See 28 U.S.C. § 1915(a). However, the court has broad
10 discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d
11 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

12 Several district courts have ruled that denial of *in forma pauperis* status is not
13 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
14 See *Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
15 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*
16 *v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*,
17 61 F.R.D. 639 (M.D.Pa. 1974).

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19 Petitioner was given an opportunity to pay the filing fee or submit a completed IFP
20 application. He was provided the appropriate forms and given additional time to submit the
21 appropriate forms. He has not done so nor has he requested additional time to comply with the
22 Court's Order.
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1 **CONCLUSION**

2 For the foregoing reasons, the undersigned recommends the Court deny Petitioner's
3 application to proceed *in forma pauperis* and to dismiss the petition for writ of habeas corpus
4 without prejudice.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure (Fed. R. Civ. P.)
6 72(b), the parties shall have fourteen (14) days from service of this Report and Recommendation
7 to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result
8 in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985).
9 Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this
10 matter for consideration on **May 18, 2012**, as noted in the caption.
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13 **DATED** this 1st day of May, 2012.
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16 Karen L. Strombom
17 United States Magistrate Judge
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